

TAX PROCEDURE

Joint return signed by wife alone.

Income tax returns signed only by taxpayer's wife on his oral authorization to do so are not returns and do not relieve taxpayer of penalty for failure to file return.

The Commissioner relies on Section 291 of the 1939 Internal Revenue Code and Regulations 111, Section 29.51-2 (a) and (b).

The taxpayer was not sick so as to be unable to sign the returns nor was he absent from the United States so as to prevent his signing them. He had executed no power of attorney authorizing his wife to sign for him. Therefore, the returns were not proper returns. Cf. *Plunkett v. Commissioner*, 118 F.2d 644, affirming *Theodore R. Plunkett*, 41 B.T.A. 700. There, the original return contained a statement of the taxpayer's income and deductions, but was not signed. The court held that the return should be considered no return at all.

It is true that the taxpayer subsequently filed amended returns for all the years in issue and signed them himself. But if the original returns were not proper returns, then the filing of late returns does not avoid the delinquency penalty for the failure to file proper returns in the first place.

(- U.S. Tax Court, (Black, J.); *Morris Miller*, T.C. Memo. Op. 1955-112, April 29, 1955.)

23 LW 2589 and 2590 - 5-17-55